

APPEAL NO. 030273
FILED MARCH 18, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 3, 2003. With respect to the issue before her, the hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the third quarter because the claimant did not satisfy her burden of proving that her unemployment during the qualifying period for the third quarter was a direct result of her impairment. The claimant appeals, challenging the determinations that she did not meet her burden of proof on the direct result criterion and that she is not entitled to SIBs for the third quarter as being against the great weight of the evidence. In its response to the claimant's appeal, the respondent (carrier) urges affirmance. The carrier did not appeal the hearing officer's determination that the claimant satisfied the good faith requirement by conducting a good faith job search and that determination has, therefore, become final. Section 410.169.

DECISION

Reversed and a new decision rendered that the claimant is entitled to SIBs for the third quarter.

The parties stipulated that the claimant sustained a compensable injury on _____; that her compensable injury included the right and left shoulders, coccyx, lumbar spine, reflex sympathetic dystrophy/complex regional pain syndrome, and bilateral carpal tunnel syndrome; that the claimant reached maximum medical improvement on August 18, 2000, with an impairment rating of 27%; and that the third quarter of SIBs ran from September 7 to December 6, 2002, with a corresponding qualifying period of May 25 to August 24, 2002. Much of the hearing officer's discussion focuses on factors that appear to question whether the claimant's job search was conducted in good faith; nevertheless, the hearing officer determined that the claimant had satisfied the good faith requirement and as noted above that determination was not appealed.

The hearing officer determined that the claimant did not sustain her burden of proving that her unemployment during the qualifying period was a direct result of her impairment from the compensable injury. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(c) (Rule 130.102(c)) states that an "injured employee has earned less than 80% of the employee's average weekly wage as a direct result of the impairment from the compensable injury if the impairment from the compensable injury is a cause of the reduced earnings." Thus, it is clear that the impairment need only be a cause of the reduced earnings and need not be the only cause. In this instance, although there are some differences in the work restrictions imposed by the treating doctor and by the doctor that examined the claimant at the request of the carrier, the significant factor is that each of those doctors imposed both hour restrictions and task restrictions upon the

claimant's return to work. The most significant task restrictions for the claimant, who worked as a customer service representative at the time of her injury and who has worked almost exclusively in clerical/administrative jobs, were the keyboarding restrictions which the treating doctor and the carrier's doctor imposed. With the evidence in this posture, we believe that the hearing officer's determination that the claimant did not satisfy the direct result requirement is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Indeed, we note that the carrier did not even contend that the claimant had not satisfied the direct result requirement either in its initial denial of SIBs or at the hearing. And, while we acknowledge that the direct result issue was before the hearing officer even in the absence of a carrier's challenge to direct result, the carrier's failure to advance this argument seems a strong indicator that the evidence establishes that the claimant's unemployment was a direct result of her impairment. Accordingly, we reverse the hearing officer's direct result determination and the determination that the claimant is not entitled to SIBs for the third quarter and render new determinations that the claimant's unemployment in the qualifying period for the third quarter is a direct result of the impairment from the compensable injury and that the claimant is entitled to SIBs for the third quarter.

The hearing officer's determinations that the claimant's unemployment in the qualifying period for the third quarter was not a direct result of her impairment from the compensable injury and that she is not entitled to SIBs for the third quarter are reversed and a new decision rendered that the claimant's unemployment in the qualifying period was a direct result of her impairment from the compensable injury and that the claimant is entitled to SIBs for the third quarter. Accrued and unpaid benefits should be paid in a lump sum with interest.

The true corporate name of the insurance carrier is **ROYAL INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Thomas A. Knapp
Appeals Judge